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Nos. 95-1709 and 95-1751

In the Supreme Court of the United States

OCTOBER TERM, 1995

TEMPLETON COAL COMPANY, INC., ET AL., PETITIONERS

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

DAVON, INC., PETITIONER

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, violates the Due Process Clause or the Just Compensation Clause of the Fifth Amendment as applied to petitioners.

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In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-1709

TEMPLETON COAL COMPANY, INC., ET AL., PETITIONERS

v.

SHIRLEY CHATER,
COMMISSIONER OF SOCIAL SECURITY, ET AL. [1]

No. 95-1751

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[1] The responsibilities of the Secretary of Health and Human Services under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.*, were transferred to the Commissioner of Social Security as of March 31, 1995. See Social Security Independence and Program Improvements Act of 1994 (1994 Act), Pub. L. No. 103-296, §§ 105(a)(1) and (2)(A), 108(h)(9)(A) and (B), 110(a), 108 Stat. 1472-1473, 1487-1488, 1490. In accordance with Section 106(d) of the 1994 Act, 108 Stat. 1477, the Commissioner of Social Security is substituted for the Secretary of Health and Human Services as a party in this case. See Sup. Ct. R. 35.3.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-32a)[2] is reported at 75 F.3d 1114. The opinion of the district court granting summary judgment in favor of respondents in the *Templeton Coal* case (Pet. App. 34a-83a) is reported at 882 F. Supp. 799. The opinion of the district court granting summary judgment in favor of respondents in the *Davon* case (95-1751 Pet. App. B1-B10) is not reported. The order of the district court in *Templeton Coal* denying a preliminary injunction (Pet. App. 84a-109a) is reported at 855 F. Supp. 990; a prior order of that court granting a preliminary injunction (Pet. App. 110a-112a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on January 26, 1996. The petition for a writ of certiorari in No. 95-1709 was filed on April 22, 1996. The petition for a writ of certiorari in No. 95-1751 was filed on April 23, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. 9701 *et seq.* (Coal Act or Act), was enacted in response to a crisis in health care costs in the coal industry. The Act has its origins in a series of collective bargaining agreements between coal mine operators and the United Mine Workers of America (UMWA). Those contracts, known as National Bituminous Coal Wage Agreements

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[2] Unless otherwise indicated, "Pet. App." refers to the appendix to the petition for a writ of certiorari in No. 95-1709.

(NBCWAs), created multi-employer benefit plans that provided health care benefits to active and retired miners and to their dependents. See Pet. App. 2a-6a.

The health care benefits of coal miners, their dependents, and their survivors have for many years been a central issue in labor relations in the coal industry. In 1946, the federal government nationalized the coal industry in response to a UMWA strike over health and retirement benefits. The government and the UMWA subsequently negotiated a contract (the Krug-Lewis Agreement) that, among other things, established employer-sponsored health and retirement programs. In 1947, after the mines were returned to private control, the UMWA and the Bituminous Coal Operators Association (BCOA) entered into the first NBCWA, which created a multi-employer health and welfare fund. Pet. App. 3a.

In 1950, a successor NBCWA established another multi-employer fund, known as the 1950 Welfare and Retirement (W&R) Fund, to provide health care benefits to active and retired miners and to their dependents. Retired miners qualified for health care and other retirement benefits from the 1950 W&R Fund on the basis of portable service credits, which they accrued through their employment with NBCWA signatory operators. Pet. App. 60a. The 1950 W&R Fund was financed through per-ton royalties paid by signatory coal operators according to rates specified in successive NBCWAs or amendments. *Id.* at 3a-4a.

The 1950 W&R Fund provided both health and retirement benefits for active and retired miners until 1974, when Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.* In response to ERISA's new

funding requirements for pension plans, the 1974 NBCWA divided the 1950 W&R Fund into four "trusts," two of which—known as the 1950 Benefit Trust and the 1974 Benefit Trust—financed medical benefits. (The other two trusts covered retirement benefits for miners, and are not at issue in this case.) The 1950 Benefit Trust provided health care benefits to miners who retired before 1976, and to their dependents. The 1974 Benefit Trust initially provided health care benefits to active miners, to miners retiring subsequently, and to their dependents. The 1974 NBCWA expressly promised that covered retired miners would retain health benefits for life. Pet. App. 38a.

The 1978 NBCWA limited the coverage of the 1974 Benefit Trust to "orphan" retired miners whose last coal industry employer had gone out of business or had otherwise ceased contributing to the trusts, and to their dependents. Responsibility for the health care benefits of non-orphaned retirees, as well as active miners, was shifted to the individual coal operators remaining in business. Pet. App. 4a-5a. The 1978 NBCWA contained a guarantee clause, which obligated signatories to make sufficient contributions to ensure payment of the lifetime benefits promised in the 1974 NBCWA, and an "evergreen" clause, binding 1978 signatories to the levels of funding specified in the 1978 and subsequent NBCWAs, whether or not they actually signed subsequent agreements. *Id.* at 39a.

2. By the 1980s, a combination of demographic and economic factors seriously impaired the financial stability of the 1950 and 1974 Benefit Trusts. First, as throughout American industry, the costs of health care rose steeply. Second, structural changes in the

coal industry caused substantial reductions in both the number of mine operators that were signatories to the NBCWAs and the number of active coal miners employed by signatory operators. Third, several employers that ended operations successfully contended in court that their obligation to provide health benefits to retired employees ceased with the last NBCWA that they signed, and that the 1974 Plan was responsible for their retirees' medical benefits. Thus, as more operators stopped contributing to the trusts, their withdrawals forced the remaining participating employers to shoulder increasingly large contribution obligations to pay for newly orphaned retirees as well as their own retirees. See Pet. App. 4a-5a.

After a protracted strike in 1989-1990 at the Pittston Coal Company, in which health benefits were a major issue, the Secretary of Labor established a bipartisan advisory commission to study the financial crisis confronting the Benefit Trusts. Pet. App. 5a. The Coal Commission identified the escalating costs of paying for "orphan" retirees as a primary source of the financial crisis. *Coal Commission Report: A Report to the Secretary of Labor and the American People* 2 (Nov. 1990) (*Coal Commission Report*). The Coal Commission proposed two possible solutions: an industry-wide funding plan taxing all current coal operators, and a more limited arrangement funded by past and present NBCWA signatories. *Id.* at viii, 60-65.

3. In October 1992, after extensive hearings on the health care crisis in the coal industry and submission of the recommendations of the Coal Commission, Congress enacted the Coal Act. See Pub. L. No. 102-486, Tit. XIX, Subtit. C, 106 Stat. 3036. The Coal Act was intended "to remedy problems with the

provision and funding of health care benefits * * * to the beneficiaries of [coal industry] multiemployer benefit plans"; to ensure "sufficient operating assets" for such plans; and "to provide for the continuation of a privately financed self-sufficient program" for delivering health care to the plan beneficiaries. *Id.* § 19142(b), 106 Stat. 3037. Congress also found that, to ensure the proper functioning of interstate commerce, the coal industry's existing system for funding retiree health benefits had to be modified "to identify persons most responsible for plan liabilities." *Id.* § 19142(a)(2), 106 Stat. 3037.

The Coal Act established a new private multiemployer plan, the UMWA Combined Benefit Fund (Combined Fund), as the successor to the 1950 and 1974 UMWA Benefit Plans. 26 U.S.C. 9702(a)(1)-(2).[3] The Combined Fund is required to provide beneficiaries of the 1950 and 1974 Plans with substantially the same health benefit coverage that those plans provided. 26 U.S.C. 9703(b)(1). Health benefits under the Combined Fund are limited to retired miners and their dependents who were eligible to receive, and were receiving, benefits from the 1950 and 1974 Plans as of July 20, 1992. 26 U.S.C. 9703(e)-(f). The Combined Fund thus has a closed class of beneficiaries, the membership of which will diminish over time.

The Combined Fund is financed primarily through annual premiums. 26 U.S.C. 9704. Those premiums must be paid by companies that signed one or more NBCWAs, or that made contributions to the 1950 and 1974 Plans under related "me-too" wage agreements that they signed (collectively, signatory operators).

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[3] The Act also creates another plan, the 1992 UMWA Benefit Plan, which is not at issue in this case. See 26 U.S.C. 9712.

See 26 U.S.C. 9701(b)(1) and (3), 9701(c)(1). The Coal Act bases the amount of premiums on the principles that each signatory operator should bear the cost of providing benefits to its own retirees, and that all signatories should share proportionally in the industry-wide cost of providing benefits to orphan retirees. Towards the first end, the Act directs the Commissioner of Social Security to match beneficiaries of the Combined Fund with the signatory operator responsible for paying for their health care benefits. 26 U.S.C. 9706(a). Assignments are made pursuant to a statutory formula designed to place the primary burden on signatory operators who signed NBCWAs in 1978 and thereafter. *Ibid.* If a company ceased participating in NBCWAs prior to 1978, it is not assigned responsibility for its former employees and their dependents unless those employees did not work for any surviving signatory operator that signed an NBCWA in 1978 or thereafter, and those employees worked for the company (or a related entity) longer than they worked for any other surviving operator. See 26 U.S.C. 9706(a)(1)-(3).

Signatory operators are also potentially responsible for a proportional share of the premiums for orphan beneficiaries, *i.e.*, retired miners whose former coal-industry employers have all gone entirely out of business. To mitigate that additional burden, however, the Act makes available additional sources of funding for the Combined Fund: 26 U.S.C. 9705; 30 U.S.C. 1232(h). Thus far, the existence of those additional funding sources has meant that petitioners (indeed, all signatory operators) have not been required to pay premiums for unassigned beneficiaries. Pet. App. 63a n.10.

4. In these cases, signatory operators that ceased coal mining operations before the 1974 NBCWA have brought a constitutional challenge to the funding obligations of the Coal Act as applied to them. Petitioners Davon, Inc., and Templeton Coal Company signed the 1950 NBCWA,[4] and Templeton signed succeeding NBCWAs in the 1950s and 1960s. Based on their participation in one or more NBCWAs, petitioners were assigned beneficiaries under the Coal Act and are obligated to pay annual premiums to the Combined Fund. During the time that petitioners conducted mining operations pursuant to those NBCWAs, their employees accrued service credits, which were counted in determining their eventual eligibility for health benefits under the 1950 and 1974 Trusts. See p. 3, *supra*.

Petitioners filed separate suits in the United States District Court for the Southern District of Indiana to enjoin the enforcement of their financial obligations under the Act. They contended that those obligations violate the Due Process Clause and Just Compensation Clause of the Fifth Amendment. In both cases, the district court granted summary judgment for respondents and upheld the constitutionality of the Coal Act's funding obligations. Pet. App. 34a-81a; 95-1751 Pet. App. B1-B10.

5. a. The court of appeals consolidated petitioners' appeals and affirmed. Pet. App. 1a-32a. Addressing

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[4] Petitioner Davon is the corporate successor to the New York Coal Company, which mined coal until 1954 pursuant to the terms of the 1950 NBCWA. Pet. App. 9a-10a. The suit brought by petitioner Templeton Coal (No. 95-1709) was joined by petitioners Sherwood-Templeton Coal Company, Inc., Princeton Mining Company, and Berwind Corporation; we refer to those petitioners collectively as "Templeton."

first their due process challenge (*id.* at 12a-25a), the court noted that the Coal Act is "a classic example of an economic regulation—a legislative effort to structure and accommodate 'the burdens and benefits of economic life.'" *Id.* at 12a (quoting *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 83 (1978)). It therefore held that the Coal Act is subject to review only under the "minimum scrutiny, rational basis test," under which economic legislation need only be "supported by a legitimate legislative purpose furthered by rational means." *Id.* at 12a-13a.

Although the court agreed with petitioners that the Act's funding obligations operate retroactively as applied to them, it rejected their contention that such retroactive legislation requires a more stringent review. Pet. App. 13a-14a. Observing that "Supreme Court precedent could not be more clearly contrary to [petitioners'] position," *id.* at 14a, the court of appeals read this Court's cases to hold that "the same due process standard applies to retroactive economic legislation," *id.* at 16a, and that "the burden to justify retroactivity in economic legislation 'is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose,'" *id.* at 17a (quoting *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 730 (1984)).

The court of appeals concluded that Congress had acted rationally in requiring Combined Fund contributions from companies, such as petitioners, that had left the coal business before 1974; indeed, it suggested that it would have been irrational for Congress not to require funding from the signatories to the 1950 NBCWA. See Pet. App. 19a. The court first noted

that every signatory operator had profited from the labor of its retired miners. *Ibid.* It also pointed out that, even though the NBCWAs that petitioners signed had not expressly provided for lifetime health care benefits for miners, the various NBCWAs had in fact created a system providing lifetime benefits to retirees for almost fifty years; thus, Congress had rationally concluded that miners had a "legitimate expectation * * * of lifetime health benefits," and that "the promise of lifetime benefits dates back to the 1940s." *Id.* at 20a. Petitioners, the court observed, "were part of this tradition and can rationally be said to have contributed to a reasonable expectation of lifetime health benefits." *Id.* at 21a. The court further concluded that Congress had reason to believe that contributions from all signatory operators were necessary to ensure adequate funding for the Combined Fund and to prevent further economic conflict in the coal industry. *Id.* at 22a.

b. The court of appeals also rejected petitioners' taking claims (Pet. App. 25a-32a) under an application of the three factors identified by this Court in *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224-225 (1986): "(1) 'the economic impact of the regulation on the claimant'; (2) 'the extent to which the regulation has interfered with distinct investment-backed expectations'; and (3) 'the character of the governmental action.'" Pet. App. 26a.

With respect to the economic impact of the Coal Act on petitioners, the court concluded that the impact was "directly related" to petitioners' participation in prior NBCWAs, since their funding liability for their own retirees and for orphan retirees is based on the number of retirees that they had employed. Pet. App. 27a. With respect to petitioners' investment-backed

expectations, the court rejected petitioners' argument that they could have had no expectation that they would be made liable for their retirees' health benefits. The court noted that the federal government had shown intense interest in coal miners' health benefits since the 1946 UMWA strike, that troubled labor relations in the coal industry had been resolved through establishment of a multi-employer plan, and that "stability in the coal mining industry was of national importance and that federal intervention to avoid instability was foreseeable." *Id.* at 29a. Moreover, the court stressed, petitioners "substantially participated in a system that provided continuous benefits and created legitimate expectations that such provisions would not cease." *Ibid.*

As for the third factor (the "character" of the governmental action), the court emphasized that the Coal Act does not physically invade petitioners' property or permanently appropriate their assets to governmental use. Pet. App. 30a-31a. Relying on *Connolly*, 475 U.S. at 225, the court concluded that the Coal Act merely "adjusts the benefits and burdens of economic life to promote the common good," and therefore "does not constitute a taking." Pet. App. 31a.

ARGUMENT

The decision of the court of appeals is one of a series of appellate decisions rejecting constitutional challenges to the Coal Act. See *Barrick Gold Exploration, Inc.* v. *Hudson*, 47 F.3d 832 (6th Cir.), cert. denied, 116 S. Ct. 64 (1995); *In re Chateaugay Corp.*, 53 F.3d 478 (2d Cir.), cert. denied, 116 S. Ct. 298 (1995); *In re Blue Diamond Coal Co.*, 79 F.3d 516 (6th Cir.

1996).[5] The decision in this case is correct and does not conflict with any decision of this Court or other courts of appeals. Further review is therefore not warranted.

1. a. Petitioner Templeton claims (95-1709 Pet. 9-18) that the Coal Act's funding obligations, as applied to coal operators who ceased participating in NBCWAs prior to 1974, violate substantive limits on economic legislation imposed by the Due Process Clause.[6] But the Coal Act "come[s] to the Court with a presumption of constitutionality, and * * * the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976). As long as a "statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches." *Pension Benefit Guaranty Corp.* v. *R.A. Gray & Co.*, 467 U.S. 717, 729 (1984). Moreover, "the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively." *Ibid.* Even

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[5] The *Blue Diamond* decision also involved coal companies that, like petitioners, were not signatories to the 1974 NBCWA; the Sixth Circuit upheld the Coal Act on reasoning similar to that of the court of appeals in this case. An appeal presenting similar constitutional issues is currently under submission in the Third Circuit. *Lindsey Coal Mining Co.* v. *Chater*, No. 95-3626 (argued June 3, 1996). Other cases presenting similar issues are pending in district courts in Massachusetts, Pennsylvania, Texas, and the District of Columbia.

[6] Petitioner Davon advanced the same argument in the court of appeals but has not renewed it in this Court.

when a statute has retroactive effect, the Due Process Clause is satisfied as long as "the retroactive application of the legislation is itself justified by a rational legislative purpose." *Id.* at 730.

The funding provisions of the Coal Act, including the imposition of premium obligations on pre-1974 signatory operators like Templeton, satisfy the standards of rational-basis review. The Coal Act's objective—resolution of the financial crisis in the health care system for coal miners—is plainly legitimate.[7] Congress knew, from the long experience of labor relations in the coal industry dating from the federal takeover of the coal mines in the 1940s through the Pittston strike of the 1980s, that the crisis in health care benefits threatened to deprive thousands of retired coal miners and their dependents of their health benefits, and also threatened seriously to disrupt interstate commerce. See Pub. L. No. 102-486, Tit. XIX, Subtit. C, § 19142(b), 106 Stat. 3037. Given the importance of coal production to the national economy and the prospect that those problems could lead to further labor unrest and inflict economic harm on coal operators and retired miners, the Coal Act plainly advances a legitimate government purpose.

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[7] Templeton suggests (95-1709 Pet. 13) that the Coal Act "was not passed to benefit former employees," but rather was meant solely to benefit coal operators who signed NBCWAs in 1974 and thereafter. That assertion ignores the declared policies of the Act. Moreover, even if Congress's actual motives were in doubt, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged [statute] actually motivated the legislature." *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 315 (1993).

As for the means by which Congress accomplished that objective, Congress had at hand several options for allocating the cost of financing the Combined Fund. It could have restricted the financing obligation to signatories of the then-current NBCWA. Alternatively, Congress could have chosen to impose a tax on the coal industry as a whole, or paid for the benefits out of general revenues. It also had a number of intermediate options, each of which would have required line-drawing. It could have drawn the line at the 1978 NBCWA, which created the "guarantee" and "evergreen" clauses; the 1974 NBCWA, which established the 1950 and 1974 Trusts; the 1950 NBCWA, which created the immediate predecessor of those trusts; or some other point.

Each of those classifications would have been justifiable as a response to the financial crisis in the health care system for miners. Templeton, of course, argues that when Congress decided to include pre-1974 NBCWA signatories in the funding mechanism, it drew the line at the wrong place. But that kind of line-drawing exercise is a quintessentially legislative task, and "there is no need for mathematical precision in the fit between [the] justification and means" chosen by the legislature. *Concrete Pipe & Prods. of California, Inc.* v. *Construction Laborers Pension Trust*, 508 U.S. 602, 639 (1993).

Congress acted rationally in requiring pre-1974 signatory operators to contribute to the Combined Fund. Every such operator previously employed miners who were entitled to receive retirement health benefits from the 1950 and 1974 Benefit Trusts. Those trusts were multi-employer trusts; miners received their entitlement to health care benefits based on portable service credits obtained from operators

who signed one of the NBCWAs in effect since 1950. Moreover, those trusts provided "comprehensive health care benefits for retired miners and their families" for 45 years, *Coal Commission Report* vii, and retired miners had "legitimate expectations of health care benefits for life" from the trusts, *id.* at 1. As the Sixth Circuit observed in rejecting the same challenge, all of those mine operators "directly contributed to the Combined Fund's liabilities by providing service credits to [their] former employees." *Blue Diamond Coal*, 79 F.3d at 523. It was therefore proper for Congress to require all the coal operators who contributed to the liabilities of the benefit funds to pay some of the cost of restoring the financial stability of the health care system. See *Concrete Pipe*, 508 U.S. at 637-638.

In addition, all signatory operators, including those that had left the business of coal mining, benefited substantially from participation in the multi-employer benefit system that was established in the 1940s and was facing a crisis in the early 1990s. First, they plainly benefited from their own miners' labor. See 138 Cong. Rec. S17,603 (daily ed. Oct. 8, 1992) ("technical explanation" of 1992 Coal Act introduced by Sen. Wallop) (Coal Act assigns financial responsibility to "those companies which employed the retirees in question, and thereby benefitted from their services"). Moreover, all signatory operators benefited from the ease of movement of miners and the labor peace throughout the industry to which those multi-employer trusts (with their portable service credits) significantly contributed. See *Blue Diamond Coal*, 79 F.3d at 524; cf. *Concrete Pipe*, 508 U.S. at 638-639. Congress therefore reasonably concluded that all signatory operators should be held

financially responsible for making good on the "moral obligation to the [miners] and retirees" to contribute towards the cost of their health care. See *National R.R. Passenger Corp.* v. *Atchison, T. & S.F. Ry.*, 470 U.S. 451, 477 (1985).

Congress also rationally concluded that inclusion of pre-1974 signatory operators in the Coal Act's financing scheme was necessary to secure adequate funding for the health care of retired coal miners and their dependents. Financial and actuarial figures presented at 1991 Senate hearings called into question the feasibility of limiting the so-called "reachback" provision to 1978 and later NBCWA signatories. A more limited reachback provision could well have left a significant number of beneficiaries of the 1950 UMWA Benefit Trust "orphaned." See Staff of House Comm. on Ways and Means, 103d Cong., 1st Sess., *Financing UMWA Coal Miner "Orphan Retiree" Health Benefits* 24-27 (Comm. Print 1993); 138 Cong. Rec. H11,413 (daily ed. Oct. 5, 1992) (Rep. Rahall) (noting that "75 percent of the retirees served by the [UMWA] health funds never worked for, or had any connection with, a currently contributing company"). Given that possibility, it was "surely proper for Congress to legislate retrospectively to ensure that costs of a program are borne by the entire class of persons that Congress rationally believes should bear them." *United States* v. *Sperry Corp.*, 493 U.S. 52, 65 (1989).

Templeton argues (95-1709 Pet. 13) that, because it left the coal industry before 1974, it is less responsible for the problems addressed by the Coal Act than companies that continued to participate in NBCWAs through the 1970s and 1980s. As explained above, the Coal Act takes account of differences in responsibility for the fiscal crisis by placing the primary

financial burden on operators that signed the 1978 NBCWA and subsequent wage agreements. See p. 7, *supra*. An operator that did not sign the 1978 NBCWA may be assigned a retired miner only if no other existing operator that employed that miner signed the 1978 NBCWA, and only if the operator employed the miner for a longer period of time than any other signatory operator. See 26 U.S.C. 9706(a)(3). Signatory operators like petitioners are the operators of last resort for retired miners who otherwise would be "orphaned"; if petitioners were not required to contribute, the costs of health care for their orphans would have to be borne by a smaller group of operators—exactly the conditions that led to the crisis that precipitated enactment of the Coal Act. In any event, "[i]t is enough to say that the Act approaches the problem of cost spreading rationally; whether a broader [or, here, narrower] cost-spreading scheme would have been wiser or more practical under the circumstances is not a question of constitutional dimension." *Turner Elkhorn*, 428 U.S. at 19.

b. Templeton suggests (95-1709 Pet. 10) that there is a conflict between recent decisions of this Court reviewing retroactive laws under the rational basis test and earlier precedents that condemned retroactive legislation determined to be "harsh and oppressive." The Court has already made clear, however, that the "harsh and oppressive" rubric is nothing more than a shorthand for "the [general] prohibition against arbitrary and irrational legislation * * * clearly articulated in *Turner Elkhorn*." *R.A. Gray*, 467 U.S. at 733; see *United States* v. *Carlton*, 114 S. Ct. 2018, 2022 (1994). As long as the retroactive application of a law "is rationally related to a legitimate legislative purpose," it is "consistent with the

Due Process Clause." *Id.* at 2024. The Due Process Clause does not empower a court to condemn rational economic legislation simply because the law might be thought "harsh" or "oppressive" in some respect.

Templeton also asserts (95-1709 Pet. 12) that the "touchstone" of due process analysis of retroactive legislation is "the principle of repose." The Court has made clear, to the contrary, that legislation does not violate the Due Process Clause merely because it disturbs that interest. "[L]egislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations," and "[t]his is true even though the effect of the legislation is to impose a new duty or liability based on past acts." *Turner Elkhorn*, 428 U.S. at 16; *R.A. Gray*, 467 U.S. at 729-730. Thus, contrary to Templeton's related suggestion (95-1709 Pet. 16-17), the Coal Act is not constitutionally infirm merely because companies that ceased participating in NBCWAs before 1974 might not have been able to foresee that Congress one day would impose new financial obligations on them. Foreseeability is not a due process requirement for retroactive legislation. See, *e.g.*, *Carlton*, 114 S. Ct. at 2023-2024; *Turner Elkhorn*, 428 U.S. at 17.[8]

2. Petitioners assert that the Coal Act effects an uncompensated taking of their property in violation of the Just Compensation (Takings) Clause. But as the Court has cautioned, when "due process arguments

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[8] Templeton argues (95-1709 Pet. 13) that the Court might have reached a different result in *Turner Elkhorn* if the coal operators in that case had not known of the danger of pneumoconiosis. The Court's opinion is directly to the contrary; it sustained the statute despite the "possibilit[y] that the Operators may not have known of the danger of their employees' contracting pneumoconiosis." 428 U.S. at 17.

[against economic legislation] are unavailing, 'it would be surprising indeed to discover' the challenged statute nonetheless violating the Takings Clause." *Concrete Pipe*, 508 U.S. at 641 (quoting *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 223 (1986)). There is, in fact, no violation in this case.

a. The Court has identified "three factors with particular significance" for assessing whether a government regulation effects an uncompensated taking of property. See *Concrete Pipe*, 508 U.S. at 643. One of those factors, the nature of the governmental action, is crucial here, for the government has not taken any identifiable property of coal operators for its own use, but has only required the operators to contribute financially to a private entity that is responsible for paying the health care costs of retired miners. The basic character of the Coal Act is therefore similar to the provisions governing employers' withdrawal liability to multi-employer pension plans that were sustained in *Connolly* and *Concrete Pipe*. In *Connolly*, the Court explained that the government "d[id] not physically invade or permanently appropriate any of the employer's assets for its own use," but instead imposed a financial obligation on employers to "safeguard[] the participants in multiemployer pension plans." 475 U.S. at 225.[9]

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[9] Davon asserts (95-1751 Pet. 12, 14) that, unlike the companies in *Connolly* and *Concrete Pipe*, it is being called on to finance "a government program." The Combined Fund was expressly established as a private plan, however, see 26 U.S.C. 9702(a)(1), and one of Congress's principal objectives in the Coal Act was "to provide for the continuation of a privately financed self-sufficient program" for delivering health care to retired coal miners expecting health benefits under the private 1950 and 1974 Benefit Trusts. See Pub. L. No. 102-486, Tit.

The same is true of the Coal Act, which implements a "public program that adjusts the benefits and burdens of economic life to promote the common good." *Connolly*, 475 U.S. at 225. Even though it might be said that the Coal Act requires petitioners to devote their assets to satisfying their new financial obligations to the Combined Fund, "[g]iven the propriety of the governmental power to regulate, it cannot be said that the Taking Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another." *Id.* at 223. Thus, petitioners "ha[ve] not identified any of [their] property that was taken without just compensation." *Sperry*, 493 U.S. at 59.[10]

Petitioners attempt to distinguish *Concrete Pipe* and *Connolly* by arguing that the employers affected

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XIX, Subtit. C, § 19142(b), 106 Stat. 3037. The Combined Fund provides benefits to the same people who were receiving benefits from the private 1950 and 1974 Trusts, and it provides the same medical coverage that they enjoyed prior to the enactment of the Coal Act. 26 U.S.C. 9703(b)(1) and (f).

[10] Davon argues (95-1751 Pet. 16-19) that the court of appeals adopted a *per se* rule that a taking cannot occur as long as the government does not physically invade property and acts for the common good. The court of appeals suggested no such rule, and neither do we. The court of appeals did correctly recognize, however, that the character of the governmental regulation is of substantial importance to the taking inquiry. See Pet. App. 30a-31a; cf. *Hodel* v. *Irving*, 481 U.S. 704, 716 (1987). Although there are situations in which the government's uncompensated appropriation of money (as opposed to real, personal, or intangible property) is a taking (see *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 162-163 (1980)), "[t]his is not a situation where the Government has appropriated all, or most, of the [required contribution] to itself." *Sperry*, 493 U.S. at 62.

in those cases had voluntarily participated in plans that provided vested benefits, and that withdrawal liability was assigned on the basis of plan liabilities incurred during the employers' voluntary association with the plan. See 95-1709 Pet. 20-21; 95-1751 Pet. 16, 19. Although the Court did mention the voluntary nature of that participation in *Concrete Pipe*, that factor was not central to the Court's resolution of the taking issue in either *Connolly* or *Concrete Pipe*. Neither case requires a direct connection between the contractual undertaking of the employer and the liabilities of the multi-employer plan. Cf. *Connolly*, 475 U.S. at 224 ("the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking").

b. The second factor identified by this Court's taking cases concerns the economic impact of the regulation on the claimants. *Concrete Pipe*, 508 U.S. at 645; *Connolly*, 475 U.S. at 225. Neither Davon nor Templeton suggests that the absolute amount of its premium obligations is sufficient to establish a taking. They evidently accept that the economic-impact factor in this case is fundamentally a matter of proportionality, *i.e.*, whether their funding obligations are proportionate to their participation in the events that led Congress to establish the Combined Fund. See Pet. App. 26a-27a; *Chateaugay*, 53 F.3d at 494; *Connolly*, 475 U.S. at 225. They assert, however, that the Coal Act's impact on them is disproportionate because they did not contribute to the 1950 and 1974 Benefit Trusts and were not made contractually responsible for the liabilities of those trusts (95-1709 Pet. 20-21; 95-1751 Pet. 13-14).

As the court of appeals pointed out (Pet. App. 28a), that argument erroneously assumes a disjunction between the coal industry's pre-1974 and post-1974 retirement health care arrangements. "Nothing radical happened in 1974." *Ibid.* The express promises of lifetime benefits made to miners in the 1970s were not unanticipated, and "every coal operator that participated in the multi-employer plans contributed directly to the retirees' legitimate expectations of lifetime benefits." *Ibid.*

Although Congress properly included all signatory operators within the class of persons obligated to contribute to the Combined Fund, it took care to ensure that signatories that remained in the coal business through the 1970s would bear the brunt of financing the Combined Fund, and that the obligations of operators like petitioners that had left the coal business would be proportionate to their more limited experience with the multi-employer trusts. As explained above (p. 7, *supra*), retirees are presumptively to be assigned to any one of their employers that signed the 1978 NBCWA, if such an employer is still in existence. A retiree may be assigned to an operator that did not sign the 1978 NBCWA only if no post-1978 signatory that employed that retiree still exists, and only if that operator employed the retiree longer than any other company still in existence. As the Second Circuit explained in *Chateaugay*, by "mooring a given company's funding obligations to a legitimate measure of its prior benefit from the UMWA health care system, the Coal Act rationally apportions future financial responsibility according to past participation." 53 F.3d at 494.

c. Finally, this Court's taking cases have considered the extent to which legislation interferes

with "reasonable investment-backed expectations." *Concrete Pipe*, 508 U.S. at 645; *Connolly*, 475 U.S. at 226. Although Davon asserts (95-1751 Pet. 14) that the Coal Act interferes with its investment-backed expectations, neither Davon nor Templeton has identified any distinct investments that were undertaken or foregone in the expectation that the companies would remain free from liability for the costs of their former employees' retirement health care. Instead, they simply argue that the Coal Act's eventual imposition of liability on them was unforeseeable. See 95-1709 Pet. 22; 95-1751 Pet. 14.

Connolly rejected a similar contention. There, employers that had withdrawn from a multi-employer pension plan when such withdrawal was fully free from liability contended that the subsequent, retroactive imposition of withdrawal liability by Congress upset their reasonable expectations. The Court concluded, however, that because pension plans had long been the objects of legislative concern even before the enactment of ERISA, prudent employers had more than sufficient notice before enactment of the withdrawal liability provisions that withdrawal might trigger future financial obligations. 475 U.S. at 227.

Here too, the long history of federal involvement in the coal industry (and particularly in the issue of health benefits for coal miners) belies the notion that pre-1974 NBCWA signatories could have reasonably expected future immunity from further contribution towards the costs of retired employees' health benefits, especially in the face of the instability and fiscal crisis that led to enactment of the Coal Act. As early as 1946, when the government nationalized the coal mines and negotiated the Krug-Lewis Agreement, it was clear both that the stability of the coal industry

demanded adequate employee health and welfare benefits, and that the federal government was prepared to intervene to ensure the availability of those benefits. The first multi-employer welfare and retirement fund, set up by the 1946 Krug-Lewis Agreement, was managed by three trustees, one of which was appointed by the federal government. *Coal Commission Report* 18-19.[11] From that point on, the federal government's involvement in establishing the health care delivery system for retired miners was extensive. *Id.* at 21, 22, 23, 27-28. Thus, signatory operators that ceased to contribute to the industry's multi-employer health benefit program could hardly have expected that they would escape all financial responsibility in the event of further federal intervention on behalf of their former employees.

Templeton argues (95-1709 Pet. 23) that the Court has required "the presence of existing regulation of the specific subject matter at issue." This Court's decision in *Ruckelshaus* v. *Monsanto Co.*, 467 U.S. 986 (1984), however, demonstrates that Templeton's argument lacks merit. *Monsanto* held that EPA's pre-1972 disclosure of trade secrets submitted to the agency under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) did not constitute a "taking." *Id.* at 1008-1010. The Court acknowledged that, during the period in question, "neither FIFRA nor any other provision of law gave EPA authority to disclose data obtained from Monsanto," but it

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[11] Indeed, the Coal Commission noted that the multi-employer funds providing health care benefits to retired miners were created "in the White House in a contract between the federal government and the UMWA." *Coal Commission Report* vii.

explained that, "[i]n an industry that long has been the focus of great public concern and significant government regulation, the possibility was substantial that the Federal Government, which had thus far taken no position on disclosure of * * * [pesticide data], upon focusing on the issue, would find disclosure to be in the public interest." *Id.* at 1008-1009. So too here: in an industry that has been the focus of as much public concern and governmental regulation as the coal industry, the possibility was surely substantial as early as the 1950s that the federal government would, upon focusing on the issue, find compulsory employer funding of retired miners' health benefits to be necessary to the proper functioning of interstate commerce.

d. Templeton argues further (95-1709 Pet. 24) that the Court's takings jurisprudence requires "a reciprocal benefit to the party whose property is taken." There is no such requirement. While the existence of an "average reciprocity of advantage" may lead to the conclusion that no uncompensated taking has occurred (see *Hodel* v. *Irving*, 481 U.S. 704, 715 (1987)), "the Just Compensation Clause 'has never been read to require the * * * courts to calculate whether a specific individual has suffered burdens * * * in excess of the benefits received' in determining whether a 'taking' has occurred." *Sperry*, 493 U.S. at 61 n.7 (quoting *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U.S. 470, 491 n.21 (1987)).

The fundamental question under the Just Compensation Clause is whether Congress is "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Connolly*, 475 U.S. at 227. That is not the case here. It was eminently reasonable for Congress

to conclude that NBCWA signatories as a class bear a collective responsibility, and one greater than that of the public as a whole, for the health care of retired coal miners and their dependents. Coal operators such as petitioners benefited from the labor of those miners as well as from the multi-employer health care system established to benefit the coal industry as a whole. Companies that left the collective bargaining process left behind miners whose retirement health care costs were ultimately borne by other operators. Under those circumstances, "fairness and justice" do not require the public at large to assume the costs of the Combined Fund, nor do they entitle Davon and Templeton to immunity from those costs.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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